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Dear James and Rushanara,

I am grateful to all fellow Committee members for the constructive debate and engagement we have enjoyed thus far on the National Security Bill. Throughout the first stage of Committee, I committed to write to members on certain issues raised during debate.

Extending prohibited places police powers to the armed forces

The Committee suggested extending the police powers in prohibited places clauses to the Minister of Defence (MoD) Police in Sovereign Base Areas (SBAs). The Government agrees that appropriate powers should be in place to prevent harmful activity being conducted in and around prohibited places, which is of course why we have introduced the police powers contained in Clause 6.

However, we believe the military are already equipped to deal with harmful activity that is taking place inside military bases. Although it is correct that the MOD Police have no presence on the SBAs, within these the Cyprus Joint Police Unit (made up of Royal Navy Police, Royal Military Police and RAF Police) has jurisdiction over service personnel and civilians subject to service discipline, such as the dependants of UK service personnel. The Cyprus Joint Policy Unit also works in full cooperation with the SBA Police, which is the police force that provides civilian policing in the SBAs.

In addition, there are practical reasons why we do not consider we should extend these powers. In the example of Cyprus, you do not have to go far from a military base in the SBAs before you are on Cypriot soil. For diplomatic and jurisdictional reasons, it would not be appropriate for us to legislate to allow UK military personnel give orders to people located in another state under Clause 6, such as ordering a person to leave an area in Cyprus that is close to a prohibited place in the SBAs.

Finally, the SBAs have expressed interest in mirroring these provisions within their own law, which would ensure the availability of this suite of powers to tackle harmful activity in relation to prohibited places within their remit.

‘Insanity’ defences in relation to biometric retention

The Committee questioned why Government amendment 18 reads “for the purposes of paragraph 20, a person is to be treated as having been convicted of an offence if the person has been found not guilty of the offence by reason of insanity”. Section 2 of the Trial of Lunatics Act 1883 provides that where a person has been found not guilty by reason of insanity, the person in question may have committed all the elements of the offence (or at least the act of the crime), however they cannot be held accountable for their crime due to their state of mind, and therefore this special verdict is given. In terms of biometric data retention, if a person has been found by a court to have committed the act of a crime, but is found not guilty by reason of insanity, the Government believes it is important for police to be able to retain their data in the same way as if they had been convicted of the offence. The retention of that individual’s biometric data would aid the police in detecting and investigating other offences. The power to take and retain biometric data on conviction for a recordable offence, which includes when an individual has been found not guilty by reason of insanity, is consistent with powers in other legislation, such as the Police and Criminal Evidence Act 1984 and the Terrorism Act 2006.

Polygraphs

The Committee asked for more information on the justification for the inclusion of polygraphs testing in STPIMs. The availability of polygraph testing in STPIMs will help operational partners assess an individual’s compliance with the measures imposed under their STPIM notice. It will also support decision-making on whether variations to the STPIM notice are required to prevent or restrict the individual’s involvement in state threat activity. For example, if operational partners covertly knew a STPIM subject was meeting with someone they were prohibited from associating with at a particular address, then a polygraph could be used to confirm this overtly and could then result in mitigations being put in place, such as an exclusion zone around that address. The results of the polygraph session and any admissions made in the course of the test could *not* be used as evidence against the individual for an offence under the National Security Bill or another criminal offence. In this example, the polygraph would justify the use of additional restrictions but could not be used as evidence in a criminal case to prosecute a breach.

The use of polygraph tests as an offender and civil order management tool is not a new concept. They have been successfully used in the management of sexual offenders since January 2013 by the National Probation Service and are also used in the management of terrorists, both for use under TPIMs and for released terrorist offenders. In the Committee evidence session Jonathan Hall QC noted “some admissions have been made that have been valuable and have led to a recall. I do not have a huge amount of data, but they (polygraphs) seem to have had some success in the context of terrorism offences”.

During Committee a question was raised regarding whether the results of the polygraph could be used by the recipient to make it harder to prosecute an offence of contravention of a notice. Whilst an individual could seek to use the results of the polygraph examination as part of their defence, this has never been an issue regarding the management of sexual offenders or terrorists and so we think it is unlikely to present issues in the context of STPIMs.

As part of the independent reviewer's role, they will keep the operation of the regime, including the polygraph measure, under review to ensure that it remains a useful tool under STPIMs.

During the consideration of these measures, Stuart McDonald MP argued that the use of polygraphs for STPIMs should exclude Scotland where they are not available for use for TPIMs. The Counter Terrorism and Sentencing Act 2021 inserted the polygraph measure into the TPIM Act 2011, therefore polygraphs are available for use in Scotland under that regime. I believe the Stuart McDonald may have been referring to cases where terrorist offenders are under licence conditions. The Counter Terrorism and Sentencing Act 2021 did not extend polygraph testing for terrorist offenders under licence in Scotland, as the Scottish authorities already have flexibility to impose this requirement under licence conditions. The Government believes we should be consistent between the STPIM and TPIM regime.

Interaction with the Official Secrets Act 1989

The Committee raised a question around how the espionage offences in the National Security Bill would interact with Official Secrets Act (OSA) 1989. Firstly, I should reiterate that we are not bringing forward reform of the 1989 Act in this Bill and consequently there will be no changes to the scope of the offences in that Act. OSA 1989 offences are predominantly focussed on protecting the UK's most sensitive information from unauthorised disclosures, where it would be damaging if the information inadvertently fell into the hands of those who would seek to do the UK harm. The new espionage offences in this Bill are quite distinct from the OSA 1989 offences. They replace and reform the existing espionage offences in the Official Secrets Act 1911 and carry strict tests for a person to be caught under them. For example, the first two offences only apply when a person is acting for, on behalf of, or with the intention to benefit a foreign power.

Under the existing law, it is possible that a person making a damaging disclosure could commit both the espionage offence in OSA 1911 and an offence under the OSA 1989. There will continue to be a degree of overlap between the Bill's new espionage offences and the OSA 1989, but I do not believe this is problematic. In fact, it reduces the risk of loopholes that could be exploited by sophisticated state threats actors and gives us the greatest chance of being able to prosecute these damaging acts in the most appropriate way. Charging decisions are taken by the Crown Prosecution Service (CPS) which selects the charges that they consider to be the most appropriate for each case. I look forward to discussing the OSA 1989 further when the Committee comes to consider New Clause 6.

Government Amendments

The Committee will note that the Government is bringing forward additional amendments to the National Security Bill at Committee stage to compliment the police powers already provided for in the Bill. This includes the ability for law enforcement officers to apply to the courts for Account Monitoring, Customer Information and Disclosure Orders. I look forward to debating these measures with the Committee.

The Government is bringing forward a new offence, to cover the situation where an individual obtains a benefit (usually money) from a foreign intelligence service (FIS), without the authorities being able to evidence that they are providing material assistance in return so as to be able to prosecute them under the offence of *assisting a foreign intelligence service* (Clause 3). Under the new provisions, an offence would be committed where a person obtains a material benefit from a FIS, and the person knows, or ought reasonably to know, that the benefit came from a FIS.

This offence will be used in cases where there is evidence of a relationship, including a financial relationship, and intelligence suggests harmful activity is or will take place, but the exact nature of the relationship – and assistance – cannot be evidenced to the criminal standard. Given the tradecraft of these organisations, often it is only the money (or other material benefit) which can be evidenced to a satisfactory criminal standard. The new offence will enable early intervention to prevent further harm from being caused.

Finally, as my office notified Committee members last week, the Government has now tabled amendments for the Foreign Influence Registration Scheme, which I look forward to debating shortly.

I'd like to thank all Committee members for the constructive approach to debate on the Bill thus far. I look forward to the resumption of Committee and the opportunity to make further progress on this important piece of legislation.

I will deposit a copy of this letter in the Library of the House

Yours Sincerely

Stephen McPartland MP
Security Minister